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5                   UNITED STATES DISTRICT COURT  
6                   EASTERN DISTRICT OF WASHINGTON  
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8                   LINDA KABRICH, an individual,

9                   No. CV-12-3052-LRS

10                  Plaintiff,

11                  ORDER RE: DISCOVERY ISSUES

12                  vs.

13                  ALLSTATE PROPERTY and  
14                  CASUALTY INSURANCE  
15                  COMPANY d/b/a ALLSTATE  
16                  NORTHWEST PROPERTY, a foreign  
17                  corporation licensed to do business in  
18                  the State of Washington,

19                  Defendant.

20                  This matter was referred to the undersigned Magistrate Judge by Order filed  
21                  January 4, 2013. A hearing was conducted telephonically and without recording.  
22                  The plaintiff was represented by J. Jay Carroll. Defendant was represented by Rory  
23                  W. Leid, III. TPI Construction LLC (TPI) was represented by Tyler Hinckley.

24                  Pending before the Court are two motions. Defendant's Motion to Compel  
25                  Discovery (ECF 15) and TPI Construction's Motion for Protective Order (ECF 24).  
26                  The motions were noted without oral argument. This matter arose because of a  
27                  subpoena for records deposition served on TPI Construction on August 10, 2012.  
28                  The subpoena was issued in the US District Court for the EDWA and commanded  
                        TPI to appear and produce documents to Defendant Allstate at Allstate's attorneys

1 offices in Seattle in the WDMA and more than 100 miles from the offices of TPI  
2 Construction, LLC in Yakima. Alternative to appearing at the attorney's offices,  
3 TPI was offered the choice of copying and sending the records to the Allstate  
4 attorneys without having to appear. Defendant and TPI do not dispute that the  
5 records sought are material and relevant to the underlying dispute.

6 Claiming that there were many thousands of pages of records and that it  
7 would be burdensome to have to produce all of those documents, TPI requested a  
8 cost of production advance from Allstate of \$2500. Allstate refused payment. The  
9 parties filed the pending motions.

10 In ordering a non-party to produce documents in response to a subpoena in  
11 the context of a motion to compel, the Court has a duty to protect a non-party from  
12 significant expense. Fed.R.Civ.P. 45(c)(2)(B)(ii). Whether a subpoena subjects a  
13 witness to undue burden within the meaning of Rule 45(c)(3)(A)(iv) is a question  
14 of reasonableness of the subpoena. FRCP 45(c)(3)(C) empowers the Court, as an  
15 alternative to quashing the subpoena, to ensure reasonable compensation when  
16 there has been a showing of substantial need for the testimony or materials that  
17 cannot otherwise be met without substantial hardship.  
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19 Here, TPI Construction says it has located 3,255 pages of materials relevant  
20 to the subpoena so far in its search. There are more to be found. Additionally, TPI  
21 says it has incurred a bill of \$630 from Clifton, Larson and Allen in preparing  
22 documents for production. TPI also says it has an estimate for copying the  
23 materials from The Bindery of \$1740 and, finally, that employees/principals in TPI  
24 have spent in excess of 60 hours of time searching for the materials to be produced.  
25 Defendant says that the materials could be produced at a cost of 10 cents per page  
26 and that the requested \$2500 advance is excessive.  
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The Court finds that TPI should receive reasonable compensation for its efforts at production but that the amounts now sought are in part due to TPI's disorganization internally in re-locating its offices. The Court ORDERS AS FOLLOWS:

1. Defendant shall pay to TPI within ten business days the amount of \$2500 as a cost of producing all of the documents/materials sought by the subpoena. TPI has not demonstrated that the subpoena should be quashed. TPI shall bear its own attorneys fees in this matter.

2. TPI shall produce all of the materials relevant to the subpoena not later than February 15, 2013 by delivering them or mailing them to the offices of Defendant's attorneys. Defendant shall bear its own attorneys fees in this matter.

DATED January 15, 2013.

s/James P. Hutton  
JAMES P. HUTTON  
UNITED STATES MAGISTRATE JUDGE